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PAGE 01 STATE 112517

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LIMDIS, FOR AMBASSADOR JOHN R STEVENSON

FOLLOWING REPEAT USNATO 2859 ACTION SECSTATE

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E.O. 11652: GDS

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SUBJECT: LAW-OF-THE-SEA: MAY 24 NAC MEETING

SUMMARY: IN SPECIAL MAY 22 COUNCIL SESSION ON LAW OF THE SEA
ATTENDED BY MOST CHIEFS OF DELEGATIONS FOR CARACAS CONFERENCE,
ALLIED REPS STRESSED NEED FOR PROMPT AGREEMENT SO AS TO CHECK
EXCESSIVE UNILATERAL CLAIMS BY COASTAL STATES AND DESIRABILITY
OF APPROACHING CONFERENCE IN A SPIRIT OF COMPROMISE IN ORDER TO
GET AN AGREEMENT. REPS ALSO GENERALLY SUPPORTED POINT STRESSED
BY AMB. STEVENSON (U.S.) THAT AGREEMENT WOULD NEED TO BE A
PACKAGE BALANCING THE INTERESTS OF COASTAL STATES AND DEVELOPED
MARITIME STATES, AND PROVIDING FOR DISPUTE SETTLEMENT. RADM
MORRIS (U.S.) BRIEFED NAC ON JCS STUDIES OF ALLIES' MARITIME
SECURITY NEEDS. ALLIED REPS MADE FREQUENT REFERENCE TO NEED
SECRET

PAGE 02 STATE 112517

FOR UNIMPEDED PASSAGE THROUGH STRAITS, WITHOUT PREJUDICING SPECIAL
INTERESTS OF CERTAIN MEMBERS, SUCH AS IN DANISH AND MESSINA
STRAITS; IMPORTANCE TO ALLIES OF KEEPING OPEN SEA LANES FOR OIL
SHIPMENTS THROUGH COASTAL AREAS IN NEAR EAST AND MEDITERRANEAN;

PREFERENCE FOR RESTRICTED ROLE FOR INTERNATIONAL AUTHORITY FOR SEABED AREA; INAPPROPRIATENESS OF CARACAS CONFERENCE AS FORUM TO REGULATE MILITARY USES OF SEABED; AND IMPORTANCE OF MAINTAINING EXISTING LAW, INsofar AS POSSIBLE, WHILE REVIEWING ENTIRE LOS. IN SUMMING UP, ACTING SYG PROPOSED THAT ALLIES CONTINUE CONSULTATIONS ON SECURITY ASPECTS DURING CARACAS CONFERENCE. END SUMMARY.

1. FOLLOWING INTRODUCTORY REMARKS BY ASYG PANSA, U.S. REP (STEVENSON) OPENED SUBSTANTIVE DISCUSSION WITH OBSERVATION THAT IN THE FIRST TWO OF THE THREE NAC CONSULTATIONS ON LOS, THE PROSPECT OF A LAW OF THESEA CONFERENCE WAS ONLY A HYPOTHESIS. IN CONTRAST, THE PRESENT CONSULTATIONS WERE TO PREPARE FOR THE REALITY OF SUCH A CONFERENCE.

2. STEVENSON THOUGHT NATO CONSULTATIONS SHOULD ADDRESS EACH OF THE THREE SEPARATE AREAS COVERED UNDER THE CONFERENCE AGENDA. THESE AREAS COVER: (1) THE TERRITORIAL SEA WHERE COASTAL STATES HAVE SOVEREIGNTY SUBJECT TO THE RIGHT OF INNOCENT PASSAGE; (2) AN ADJACENT AREA BEYOND, WHERE A COASTAL STATE WOULD EXERCISE BROAD ECONOMIC JURISDICTION; AND (3) A FULLY INTERNATIONAL AREA BEYOND THAT, COVERING THE DEEP SEABED, WHICH WOULD BE SUBJECT TO INTERNATIONAL CONTROL IN RESPECT TO RESOURCES DEVELOPMENT AND RELATED ENVIRONMENTAL PROTECTION.

3. WITH REGARD TO THE NATIONAL SECURITY ASPECTS OF THE ABOVE THREE AREAS, THERE SEEMS TO BE A CONSENSUS THAT 12 MILES IS THE ONLY GENERALLY ACCEPTABLE DEFINITION OF THE TERRITORIAL SEA. THE QUESTION THEN ARISES OF SECURING AN ADEQUATE REGIME FOR TRANSIT THROUGH INTERNATIONAL STRAITS OVERLAPPED BY A 12-MILE TERRITORIAL SEA. CONCERNING THE SECOND AREA, IT IS IMPORTANT FROM A SECURITY STANDPOINT TO RETAIN RIGHTS FOR NAVIGATION, OVERFLIGHT, AND OTHER USES AND TO EFFECT A BALANCED ACCOMMODATION BETWEEN THE EXERCISE OF COASTAL STATE RIGHTS OF ECONOMIC JURISDICTION, AND RIGHTS OF OTHER STATES, AND TO PROVIDE FOR THIRD-PARTY DISPUTE SETTLEMENT FOR CASES OF CONFLICTING USES. WITH REGARD TO SECURITY ASPECTS OF THE THIRD AREA, THE DEEP SEABED, IT WILL BE IMPORTANT TO DEFINE A SYSTEM SO THAT RESOURCE MANAGEMENT
SECRET

PAGE 03 STATE 112517

AND POLLUTION CONTROL BY INTERNATIONAL AUTHORITY WILL NOT INTERFERE WITH NAVIGATIONAL AND OTHER USES OF THE SEA.

4. BRIEFLY STATED, STEVENSON SAID SECURITY INTERESTS ARE RELATED TO AVOIDING INTERFERENCE WITH FREEDOM OF NAVIGATION AND OTHER USES, WHETHER IN THE AREA OF COASTAL STATE ECONOMIC JURISDICTION BY THE COASTAL STATE OF IN THE DEEP SEABED AREA SUBJECT TO INTERNATIONAL

CONTROL BY THE SEABED AUTHORITY. WHILE THE "PEACEFUL USES" ISSUE HAS BEEN DORMANT RECENTLY, THE ALLIES WOULD PROBABLY ALSO AGAIN HAVE TO DEAL WITH PROPOSALS TO LIMIT MILITARY USES OF THE SEABED.

5. CANADIAN REP (BEESLEY) IN GENERAL REMARKS NOTED THE IMPORTANCE OF RECOGNIZING THAT THE CARACAS MEETING CONSTITUTED A MAJOR LAW-MAKING CONFERENCE, PERHAPS THE LARGEST CONFERENCE IN WORLD HISTORY. INVOLVED WAS THE DRAFTING OF LAWS THAT WOULD RESTRUCTURE THE CURRENT BASIS OF WORLD ORDER BY CHANGING TWO CLASSIC PRINCIPLES IN INTERNATIONAL LAW--COASTAL STATE SOVEREIGNTY, AND FREEDOM OF THE SEAS. THE STENSION OF AN ECONOMIC ZONE WITH SOME FORM OF NEW, LIMITED COASTAL STATE JURISDICTION OUT OF 200 MILES OR EVEN TO THE EDGE OF THE CONTINENTAL MARGIN CONSTITUTED A RADICAL APPROACH. ANOTHER "RADICAL" APPROACH WAS THE CONCEPT OF THE OCEAN FLOOR AS A "COMMON HERITAGE OF MANKIND." ALTHOUGH MORE DEFINITION WAS NEEDED FOR THIS CONCEPT, IT WAS GENERALLY ALREADY ACCEPTED TO INCLUDE THE PRINCIPLE THAT THE SEABED IS BEYOND NATIONAL JURISDICTION AND NOT SUBJECT TO ANY STATE SOVEREIGNTY. SUCH A CONCEPT IS THUS ANALOGOUS TO THE PRINCIPLE OF THE OUTER SPACE TREATY.

6. BEESLEY SAID TOPICS LIKE THOSE ABOVE EMPHASIZE THE SENSITIVITY OF THE ISSUES WHICH WILL BE DISCUSSED IN CARACAS. IT WAS IMPORTANT TO RECOGNIZE THAT LAW OF THE SEA IS CURRENTLY IN A STATE OF "CHAOS" WITH HARDLY ANY AGREED RULES. THIS IS OF BENEFIT TO NO ONE AND IS DANGEROUS OVER THE LONG TERM. LAWS ACCEPTABLE TO THE GREATEST POSSIBLE NUMBER OF COUNTRIES ARE NEEDED. THEY MUST BE DEVELOPED BY A TRUE AND REPRESENTATIVE CONSENSUS, THEREFORE, SINCE THEIR IMPOSI-

TION BY LARGE MAJORITY VOTE, WHICH EXCLUDED IMPORTANT COUNTRIES
SECRET

PAGE 04 STATE 112517

WOULD MEAN ONLY THAT THEY ARE UNACCEPTABLE TO SOME AND THEREFORE WOULD NOT BE OBSERVED.

7. NORWEGIAN REP (ELIASSEN) NOTED NORWAY APPROACHED THE LOS CONFERENCE WITH A CONSIDERABLE SENSE OF URGENCY, SINCE A CLEAR NEED EXISTED FOR GLOBAL ACCEPTANCE OF LAWS WHICH WOULD PROTECT RESOURCES OF THE SEA AND THE RIGHTS OF PEOPLE WHO MAKE THEIR LIVING FROM IT. THUS, UNIVERSALLY ACCEPTED AGREEMENTS WERE NECESSARY TO MINIMIZE DISPUTES, AND IT WAS IMPORTANT TO HAVE MEASURES CONTROLLING SCIENTIFIC RESEARCH, SEABEDS EXPLOITATION, ETC. IF EFFORTS TO THIS END FAIL, EXPLOITATION WILL PROCEED NONETHELESS BUT DEVOID OF EFFECTIVE CONTROL. NORWAY RECOGNIZED THAT ANY ORGANIZATION ESTABLISHED TO CONTROL RESOURCE MANAGEMENT AND ENVIRONMENTAL PROBLEMS OF THE DEEP SEABED SHOULD HAVE ADEQUATE POWERS. THERE WOULD PROBABLY NEED TO BE A CLAUSE IN ANY NEW CONVENTION LIMITING INTERNATIONAL SEABED AREA TO PEACEFUL USES, BUT MILITARY AND ARMS CONTROL ASPECTS RELATING TO THE DEEP SEABEDS SHOULD NOT BE ADDRESSED BY INTERNATIONAL SEABED AUTHORITY. THEY SHOULD INSTEAD BE RESERVED TO APPROPRIATE INTERNATIONAL BODIES.

8. NORWAY SUPPORTS THE PRINCIPLE OF COASTAL STATE JURISDICTION OF RESOURCE RIGHTS OVER A 200 MILE "ECONOMIC ZONE". NORWAY ALSO AGREES WITH A 12-MILE LIMIT OF THE TERRITORIAL SEA AND WITH PROVISIONS SAFEGUARDING INNOCENT PASSAGE WITHIN AND FREEDOM OF NAVI-

GATION OUTSIDE THE 12-MILE LIMIT. HE HOPED THAT THERE WAS WIDE CONSENSUS ON THE ABOVE DEFINITIONS AND THAT THE REMAINING TASK COULD BE LIMITED TO TRANSFERRING THEM INTO TREATY TERMS.

9. WITH REGARD TO THE ECONOMIC ZONE, NORWAY RECOGNIZED THE RISK OF "CREEPING JURISDICTION" UNDER WHICH RIGHTS RESERVED TO STATES IN THEIR TERRITORIAL WATERS WOULD GRADUALLY BE EXTENDED TO COVER THE 200-MILE ECONOMIC ZONE. IT WAS IMPORTANT TO RECOGNIZE THE REAL NEEDS OF COASTAL STATES AND TO FIND PRACTICAL WAYS TO MEET SUCH REQUIREMENTS AS POLLUTION CONTROLS.

10. NORWAY STRONGLY DESIRES TO UPHOLD THE PRINCIPLES GUARANTEEING RIGHTS OF FREE NAVIGATION BUT RECOGNIZES THIS MUST BE ACCOMMODATED WITH THE CONCEPT OF SOME STATE EXERCISE OF RESOURCE RIGHTS. THE CONCEPT OF INNOCENT PASSAGE WITHIN THE TERRITORIAL SEA MAY PERHAPS NEED FURTHER DEFINITION AND REFINEMENT. A SPECIAL REGIME WOULD BE NECESSARY COVERING TRANSIT OF INTERNATIONAL STRAITS IN
SECRET

PAGE 05 STATE 112517

ADDITION TO THE REGIME COVERING TERRITORIAL SEAS.

11. SCIENTIFIC RESEARCH ALSO HAD SECURITY IMPLICATIONS, BUT IS PROBABLY MORE CLOSELY RELATED TO RESOURCE QUESTION. NORWAY DOES NOT AGREE WITH OTHERS (E.G., U.S.) WHO MAINTAIN THAT 1958 CONVENTION PROVISIONS ON RESEARCH HAVE WORKED AGAINST ALLIED INTERESTS.

12. SIMILARLY SOME REGIME WOULD BE NEEDED TO COVER VESSEL-SOURCE POLLUTION. NORWEGIAN REP SAID IT WOULD PROBABLY BE DESIRABLE TO DIFFERENTIATE BETWEEN REGULATIONS COVERING EXPLOITATION AND CONSTRUCTION AND THOSE APPLYING TO SUCH THINGS AS MARINE DUMPING. COASTAL STATES MIGHT CONCEIVABLY SET STANDARDS REGARDING SEABED EXPLOITATION AND DUMPING IN THE ECONOMIC ZONE, BUT STANDARDS COVERING CONSTRUCTION, ETC., SHOULD BE INTERNATIONAL. SIMILARLY, ENFORCEMENT BY COASTAL STATES ON INTERNATIONAL STANDARDS IN RESPECT OF FOREIGN FLAG VESSELS ENTERING THEIR PORTS MIGHT BE RECOGNIZED, BUT DISTINGUISHED FROM ENFORCEMENT AGAINST TRANSITTING SHIPS.

13. STEVENSON SUPPLEMENTED INITIAL REMARKS BY EMPHASIZING THE EFFECT OF INTERNATIONAL DEVELOPMENTS OVER PAST YEAR ON NATIONAL POSITIONS ON LOS AND MENTIONED U.S. CONCERN ABOUT PROBLEM OF ACCESS TO RESOURCES ON NON-DISCRETIONARY BASIS. WHILE THE PETROLEUM SITUATION DIFFERED FROM THAT OF HARD MINERALS, THE U.S. WOULD TAKE INTO ACCOUNT IN ITS ATTITUDE TOWARD THE SEABED REGIME THE POSSIBILITY OF THE MANIPULATION OF NATURAL RESOURCES FOR POLITICAL PURPOSES. THE COMMON HERITAGE CONCEPT, IN THE U.S. VIEW, DID NOT SIGNIFY COMMON PROPERTY. THE INTERESTS OF THE INTERNATIONAL COMMUNITY SHOULD BE ACCOMMODATED IN A MANNER THAT DID NOT INTERFERE WITH NON-DISCRETIONARY ACCESS TO SEABED RESOURCES. THIS COULD WELL BE ONE OF MOST DIFFICULT PROBLEMS TO RESOLVE AT THE LOS CONFERENCE. RECENT EVENTS HAD ALSO EMPHASIZED--FROM A BROAD NATIONAL SECURITY STANDPOINT--THE DEPENDENCE OF COUNTRIES ON

PETROLEUM AND THE NECESSITY OF ENSURING THAT ITS TRANSPORT WAS NOT SUBJECT TO DISCRIMINATORY TREATMENT.

14. TURKISH REP (YOLGA) STRESSED NEED TO REVISE 1958 CONVENTION, PARTS OF WHICH HAD NOW BECOME WELL ESTABLISHED IN INTERNATIONAL LAW, BUT OTHER ASPECTS OF WHICH HAD BEEN OVERTAKEN BY TECHNOLOGICAL DEVELOPMENTS AND THE EMERGENCE OF MANY NEWLY INDEPENDENT NATIONS. NEW LOS ARRANGEMENTS SHOULD GIVE PRIORITY TO NEEDS OF THE COMMUNITY

SECRET

PAGE 06 STATE 112517

RATHER THAN PARTICULAR REQUIREMENTS OF INDIVIDUAL COUNTRIES; EVEN SO, IT WAS NECESSARY TO BE REALISTIC AND NOT SEEK TO ESTABLISH OVERLY IDEALISTIC PRINCIPLES FATED NEVER TO BE UPHOLD. THURKEY'S PARAMOUNT CONCERN WAS THAT IN DEVISING NEW ARRANGEMENTS LOS CONFEREES SHOULD BEAR IN MIND SPECIFIC PROBLEMS TENDENCY THUS FAR IN LOS PREPARATION HAD BEEN TO CONCENTRATE ON PROBLEMS OF GENERAL NATURE. CONFLICT BETWEEN TWO COUNTRIES ON A PARTICULAR QUESTION COULD CONCERN WHOLE FAMILY OF NATIONS. HENCE NEW CONVENTION SHOULD ALSO INCLUDE RULES TO PROVIDE FOR RESOLUTION OF CONFLICTS ARISING FROM APPLICATION OF MORE GENERAL RULES WHICH WERE DEVELOPED. IN PARTICULAR, LOS CONVENTION SHOULD PROVIDE FOR COMPULSORY SETTLEMENT OF DISPUTES THAT MAY ARISE FROM APPLICATION OF GENERAL RULES.

15. FRG REP (KNOKE) SAID HIS GOVERNMENT WAS IN AGREEMENT WITH CONCEPT THAT INTERNATIONAL SEABED SHOULD BE DEALT WITH BY AN INTERNATIONAL AUTHORITY UNDER INTERNATIONAL RULES. ON ECONOMIC ZONES, FRG WAS FEARFUL THAT THIS CONCEPT WAS TOO SIMILAR TO THAT OF A TERRITORIAL SEA. DISTINCTION BETWEEN TERRITORIAL AND HIGH SEA MUST BE MAINTAINED. FRG FAVORED INSTEAD A ZONE GIVING PREFERENTIAL RIGHTS TO COASTAL STATES TO THE RESOURCES IN QUESTION. FRG ALSO SAW POSSIBLE DANGERS IN ASSIGNING RIGHTS TO COASTAL STATES IN POLLUTION MATTERS, INASMUCH AS ONLY ABOUT ONE-FIFTH OF COASTAL POLLUTION USUALLY CAME FROM OFF-SHORE SOURCES. LOS CONVENTION MIGHT WELL INCLUDE A PROVISION THAT COASTAL STATES SHOULD TAKE THE NECESSARY STEPS AGAINST POLLUTION, BUT POLLUTION REGULATION ITSELF SHOULD BE LEFT TO AN INTERNATIONAL CONVENTION, AND VESSEL-SOURCE POLLUTION STANDARDS IN THIS CONNECTION SHOULD BE SET BY IMCO, RATHER THAN BY COASTAL STATES THEMSELVES, WHOSE ACTION IN THIS RESPECT WOULD GO AGAINST FREEDOM OF NAVIGATION- A CONCEPT TO BE PRESERVED.

16. GREEK REP (THEODORPOULOS) SAW NEED FOR ORDERLY DEVELOPMENT OF LOS CONVENTION SO AS TO BRING PROBLEMS UNDER FIRM CONTROL OF INTERNATIONAL COMMUNITY AND OFFSET DANGEROUS TENDENCIES TO ARBITRARY, UNILATERAL MEASURES BY STATES. EXISTING CONVENTIONS NEED MODIFICATION TO TAKE INTO ACCOUNT CHANGES IN SITUATION SINCE THESE WERE ORIGINALLY FORMULATED. IT WAS ALSO NECESSARY TO TAKE INTO ACCOUNT THE PARTICULAR IMPORTANCE OF LOS TO THE ALLIANCE AND TO TAKE CARE NOT TO JEOPARDIZE ALLIANCE SECURITY INTERESTS. THE CONFERENCE SHOULD AVOID VAGUE ARTICLES AND NON-SPECIFIC

SECRET

PAGE 07 STATE 112517

CRITERIA WITH RESPECT TO RESOLVING PARTICULAR SITUATIONS. ARRANGEMENTS SHOULD BE DEVISED TO ALLOW INDIVIDUAL STATES TO WORK OUT MUTUALLY AGREEABLE SOLUTIONS AMONG THEMSELVES, BUT TO PROVIDE FOR THE POSSIBILITY OF THEIR TURNING TO AN ARTICLE OF THE LOS CONVENTION FOR SETTLEMENT OF A PARTICULAR DISPUTE IF NEED BE.

17. FRENCH REP (JEANNEL) STRESSED IMPORTANCE OF LOS CONFERENCE AND SERIOUS CONSEQUENCES OF FAILURE. VIEWING LOS PROBLEMS IN CONTEXT OF NATO COUNCIL, HE NOTED AS A COMMON CHARACTERISTIC OF ALLIES--ESPECIALLY THE EUROPEANS--THEIR DEPENDENCY UPON OUTSIDE FOR FUNCTIONING OF THEIR ECONOMIES. THIS HAS OBVIOUS SECURITY IMPLICATIONS, PARTICULARLY IN CASE OF ENERGY SUPPLIES WHOSE CONTINUANCE MUST BE ASSURED. MAIN CONCERN IN LOS IS TO MAINTAIN FREEDOM OF THE SEAS. WATERS OF PRIMARY INTEREST TO THE ALLIANCE ARE NORTH AND SOUTHEAST ATLANTIC, MEDITERRANEAN, PERSIAN GULF, RED SEA, AND WEST INDIAN OCEAN, IN ALL OF WHICH FREEDOM OF COMMUNICATION MUST BE PRESERVED. MAINTENANCE OF FREEDOM FOR CIVIL NAVIGATION IS ULTIMATELY DEPENDENT UPON A MILITARY APPARATUS; HENCE FREEDOM FOR MILITARY AS WELL AS CIVIL COMMUNICATION IS ESSENTIAL. IF

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